

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DALE NORMAN HARMS,
Plaintiff,

v.

SELECT PORTFOLIO SERVICING, INC.,
et al.,

Defendants.

Case No. [16-cv-01585-WHO](#)

**ORDER GRANTING LEAVE TO FILE
FIRST AMENDED COMPLAINT AND
VACATING MOTION FOR
JUDGMENT ON THE PLEADINGS**

Re: Dkt. No. 15, 46

On August 9, 2016 plaintiff Dale Harms moved for leave to file a First Amended Complaint. Dkt. No 46. A court “should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a). “Although the rule should be interpreted with ‘extreme liberality,’ leave to amend is not to be granted automatically.” *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990). “Absent prejudice, or a strong showing of any of the remaining [] factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

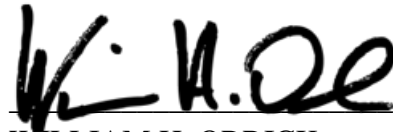
Defendants oppose the motion, arguing that leave to amend would be futile as Harms’s proposed amended complaint does not include any viable claims. Dkt. No. 51. at 7. Defendants raise some strong critiques of Harms’s proposed amended complaint, but given the liberal standard for granting leave, that Harms has not previously amended his complaint and that he is representing himself in this proceeding, I GRANT Harms’s motion for leave to file a First Amended Complaint.

Harms will have 10 days to file his amended complaint. He may file the proposed amended complaint he submitted with his motion or he may revise it to further address the critiques defendants raise. I am not deciding whether I would have granted defendants’ pending

1 motion on the merits, but I strongly advise Harms to be sure he alleges sufficient facts addressing
2 defendants' argument that he cannot state a plausible claim; I may not allow him to make a third
3 attempt if the next amendment is not sufficient. Because I GRANT Harms's motion for leave to
4 amend, defendants' motion for judgment on the pleadings is DENIED as moot. The hearing set
5 for September 14, 2016 on these motions is VACATED.

6 **IT IS SO ORDERED.**

7 Dated: September 9, 2016

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9 WILLIAM H. ORRICK
United States District Judge